IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/10/2004

CORAM

THE HONOURABLE MR.JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MRS.JUSTICE R. BANUMATHI

Criminal Appeal No.566 of 1996

Elumalai @ Chandrasekaran .. Appellant

-vs-

The State of Tamil Nadu
rep. by its Inspector of Police
Chengee (Valathi Police Station
Cr.No.187/93). .. Respondent

This criminal appeal is preferred under Sec.374 of the Code of Criminal Procedure against the conviction and sentence passed by the learned Principal Sessions Judge, Villupuram District in S.C.No.62 of 1 995 dated 11.03.1996.

For Appellant : Mr. Saravana Kumar

For Respondent : Mr. V.M.R. Rajendran
Additional Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The appellant is the accused in Sessions Case No.62 of 1995 on the file of Principal Sessions Judge, Villupuram. After trial, the learned Sessions Judge convicted the accused / appellant for an offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life.

2. The case of the prosecution is briefly stated hereunder:
(a) The marriage of Chandrasekaran (accused) and Anjalai (deceased) was performed four months prior to the date of occurrence. They were residents of Adi Dravider Colony, Solangunam, Gingi Taluk. From the date of their marriage, both the accused and the deceased were living in the house of parents of the deceased Anajalai. Though their marriage was performed because of their love affairs, however, they were not happy thereafter. On 11 /12.07.1993, at about 12.30 a.m. (mid night), the deceased Anjalai committed suicide and on seeing the same the accused came out and

raised a hue and cry. This was informed to the Village Menial S. Kutta Nadanthan (PW.2), who informed the same to P.W.1, the Village Administrative Officer, Solangunam Village. Based on the information of PW.2, PW.1 - V.A.O. Visited the scene of occurrence at around 1.30 p.m. on 12.07.1993 and noticed that the body of the deceased was lying on the floor. He also noticed a half portion of the saree was hanging from the wooden log. After enquiry, PW.1 prepared a report (Ex.P1) at 2 .30 p.m., and sent the same to the Police Station through his another menial by name Kuppan. The said complaint was acknowledged by the Sub-Inspector of Police (PW.10) who registered a case of suspicious death in Crime No.187 of 1993. Since the death occurred within a period of four months from the date of marriage, the matter was intimated to the Sub-Collector, Gingi (PW.11) who conducted the inquest on the body of the deceased between 11.10 a.m., and 1.45 p.m. on 13.7.1993 in the presence of Panchayatars. Ex.P.15 is the inquest report. At the time of inquest, Panchayatars, namely Arunachalam, Damodharan, Chakravarthy Pillai and two others as well as the parents of the deceased Anjalai and Dhanam were present. PW.3, father of the deceased, made a statement and the same was recorded by PW.11. Ex.P.16 is a statement of PW.3. P.W.11 also enquired and obtained a statement from the accused. PW.11 sent the body for post-mortem along with Ex.P-4 requisition. P.W.11 also prepared a report Ex.P.17.

(b) P.W.6 is the Civil Assistant Surgeon attached to the Government Hospital, Gingee. On receipt of Ex.P.-4 requisition, on 13.7.1993 at about 4.00 p.m. he conducted the post-mortem examination on the dead body of the deceased Anjalai and issued Ex.P-6 post-mortem certificate.

(c) Even prior to the visit of PW.11, based on Ex.P.14, PW.12 - Inspector of Police, inspected the scene of occurrence at 6.30 a.m., on 13.07.1993. He prepared Observation Mahazar Ex.P2 in the presence of PW.2 and Kuppan. Thereafter, he was waiting for the investigation by PW.11 and on his arrival, PW.12 continued the investigation. He also recovered Material Objects 1 to 3 under Mahazar Ex.P3 in the presence of PW.2 and Kuppan. He obtained statements from PW.1, PW.3, PW.4, PW.5 and others. After visiting the Hospital at Gingi, based on Ex.P.6, he altered the FIR into one under Section 302 IPC and sent Express Report Ex.P.21. The altered FIR was sent to Court and also higher authorities. The accused was arrested opposite to the Police Station at 7.00 p.m., on 13.07.1993 and produced before the Court. On 14.07.1993, he received chemical analyst's report; he enquired PW.9 and obtained his statement and after completing the enquiry, he filed a charge sheet against the accused under Section 302 IPC on 23.02.19 95.

(d) The prosecution has examined as many as 12 witnesses as PW.1 to PW.12, marked Exs.P.1 to P.21 and also produced Mos.1 to 5. When the accused was questioned with reference to the incriminating circumstances found against him in the evidence, he denied the same and he has not examined any witness on his side.

(e) The learned Sessions Judge, on appreciation of oral and documentary evidence and other materials, accepted the case of prosecution and found the accused guilty for an offence punishable under Section 302 IPC and imposed a sentence of life imprisonment.

3. Heard Mr. Saravanakumar, learned counsel for the appellant and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for the respondent.

4. After taking us through relevant materials, the learned counsel for the appellant would submit that there is enormous delay in filing complaint to the Police regarding the occurrence and no one has explained the same, which is fatal to the prosecution. He further contended that the claim of "dowry harassment" before PW.11 is only an after thought and the said story came up only during the enquiry by PW.1 1. He also contended that the Doctor's evidence (PW.6) is not in consonance with the prosecution theory. According to him, though the entire prosecution case rests on the circumstantial evidence, the chain is not found linked and missing in many places. Finally, he argued that the conduct and character of the accused, namely, he was in the scene of occurrence throughout itself shows that the death is only a suicidal and not homicidal, as claimed by the prosecution. On the other hand, learned Additional Public Prosecutor would submit that it is true that there is an unexplained delay in filing complaint to the police, but according to him, it would not affect the prosecution case. He further contended that the evidence of PW.11 shows the motive for occurrence. According to him, the post-mortem certificate Ex.P.6 and the inquest report Ex.P.15 show that it is a case of strangulation and the prosecution has proved its case and the same was rightly accepted by the trial Judge.

5. We have carefully considered the rival submissions, evidence on record, other materials and the judgment of the trial Court.

6. Before considering the case of prosecution and the defence, it is to be noted that originally the deceased Anjalai was married to one Subramanian. When the said marriage was subsisting, the accused, who had love affairs with the deceased, frequently visited her house. Due to the conduct of the accused, who was having love affairs with the deceased, her husband Subramanian along with his relatives met PW.3 - father of the deceased and held talks and ultimately, secured divorce. Thereafter, when Anajalai went out for feeding her cow, the accused moved with her and promised to marry her. With the consent of PW.3 and his relatives, he married the deceased and stayed back in the house of PW.3. Only when they were residing in the house of PW.3, the incident occurred.

7. Coming to the first contention relating to delay in filing complaint to the Police, it is seen from the materials placed that the accused and the deceased were living in a thatched shed belonging to PW.3, though they had some misunderstanding. The fact remains, after having love affairs with the deceased, the accused married her. It is the case of prosecution that on 12.07.1993, when PW.1 VAO, Solangunam Village was in the process of collection of kist, PW.2 Kutta Nadanthan, his menial came to him around 12.00 noon and informed him that Anjalai, wife of Chandrasekaran, committed suicide. PW.1 in his chief examination has stated,

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On receipt of the information, PW.1 rushed to the spot along with another menial Kuppan around 1.30 p.m. and saw the body of the deceased lying on the floor inside the hut. He sent a report Ex.P.1 to the Police (Valathi Police Station) through Kuppan at 2.30 p.m., Though PW.1 has stated that a Police Constable came to the scene at 5.00 p.m., he has not enquired any one and left the scene stating that it is a matter to be enquired by Sub-Collector. According to PW.1, the Officers came to the spot only at 6.00 a.m., on the next day. Ex.P.1 given by PW.1 was registered in Valathi Police Station in Crime No.174 of 1993 under Section 174 Cr.P.C., i.e., suspicious death on 12.07.1993 at 16.00 hours. As rightly pointed out by the learned counsel for the appellant, there is a delay of 16.00 hours in lodging complaint to the police. Though Pws.1 and 2, the responsible Officers, namely, V.A.O., and an Assistant to him, received intimation at 12.00 noon on 12.07.1993, they have chosen to intimate the same to the Police only at 4.00 p.m. There is no explanation from anyone of them for the delay. PW.3 - father of the deceased, PW.4 - brother of PW.3 and PW.5 - wife of PW.4 who were in the scene of occurrence, at the time of commission of the offence, admittedly did not make any effort either to inform VAO or to the Police Station, though the occurrence took place in the mid-night of 11/12.07.1993. Neither the parents, nor the Officers like PW.1 and 2 - VAO and his Assistant - offered any explanation for not informing the police immediately after the occurrence or at least within a reasonable time. As rightly argued by the learned counsel for appellant, we hold that there is an inordinate delay in lodging the complaint, which stood unexplained by the prosecution and it is fatal to the prosecution case.

8. Now, let us consider whether the prosecution has established motive for the occurrence as alleged. It is the case of prosecution that since the accused had demanded a sum of Rs.15,000/- as dowry through his wife for business three days before the death of the deceased and in the event of non-fulfillment, he would do otherwise and because the said demand was not fulfilled, had killed the deceased. As rightly pointed out by the learned counsel for the appellant, the motive suggested by the prosecution is improbable and unacceptable. On the other hand, it is the case of defence that the deceased had committed suicide in view of the situation that had occurred two days prior to the death, wherein she was immolated and wounded by the disgraceful talk of her father, i.e., PW.3 towards her husband - appellant that,

(TAMIL PORTION DELETED)

is more probable and acceptable. In this regard it is relevant to refer Ex.P1, in which there is no reference to dowry harassment either to PW.1 - V.A.O., or PW.2 -Village Maniel or to any one. Except before PW.11, who conducted enquiry after the death of the deceased, even PW.3 - father of the deceased has merely stated that the deceased had informed him that her husband is in need of Rs.15,000/- for doing business. However, he has not alleged any statement said to have been made by her daughter that the accused had harassed frequently for securing money towards dowry. Only for the first time a statement - Ex.P.16 was made by PW.3 before PW.11 stating that his son-in-law (accused) demanded Rs.15,000/- towards dowry through his daughter, the

deceased. Even in Ex.P.16, except referring that the accused demanded money for business, PW.3 has not alleged any harassment said to have caused to his daughter. In the absence of complaint regarding dowry harassment or categorical statement in the form of assertion either by PW.3 or other relatives, as rightly contended by the learned counsel for the appellant, the statement before PW.11 is only an after thought and no credence be given for the same. If we eschew the allegation regarding dowry harassment as an after thought, there is no strong motive for the accused to kill his wife. We have already stated that out of love, the accused married the deceased, though they had some misunderstanding and the fact remains that they were living together till her death.

9. Let us consider whether the medical evidence support the case of prosecution. We have already referred to the evidence of PW.1 and PW.2 to the effect that the deceased Anjalai committed suicide. PW.1, who received the said information from PW.2 - Village Maniel has also stated before the Police in Ex.P.1 that the deceased committed suicide and died. In fact, in Ex.P.1, the following statement is relevant,

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10. It is clear from the above statement that the earliest information given to Village Menial - PW.2 and V.A.O., - PW.1 is that the deceased committed suicide and the same is also reflected in Ex.P1. It is not in dispute that since the deceased had died under suspicious circumstances, a team of Doctors was required to conduct the post mortem. Dr. Thayanidhi - PW.6 and Dr. Vetrivelan (not examined) had conducted the post mortem. The evidence of PW.6 - Dr. Thayanidhi shows that there are two possibilities regarding the death of the deceased. One is that the deceased might have committed suicide and the other is, as the trachea being broken, the death might have occurred due to strangulation by tightening the neck with the use of Saree (MO.1). In such a circumstance, as rightly pointed out by the learned counsel for the appellant, when there are two possibilities, the other Doctor, namely, Dr.Vetrivelan could have been called for as a witness before the Court for better appreciation of the medical version. The said irregularity weakens the prosecution case. In this regard, it is relevant to refer the following statement of PW.6 in his chief examination:

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In cross examination he has fairly admitted that the Sub-Collector (PW.11) has not examined him and he also admitted that he was not enquired by showing MO.1 - Saree. He further admitted that the Investigating Officer has not recorded his statement and noted the nature of injuries explained by him before the Court. The following statement in his cross examination is also relevant.

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Again he admitted that,

(TAMIL PORTION DELETED)

He also admitted that,

(TAMIL PORTION DELETED)

The analysis of deposition of PW.6 regarding the ligature mark found around the neck of the deceased shows that the evidence of P.W.6 is full of discrepancy. Though PW.6 has deposed that the deceased might have been assaulted before her death as there were external wounds, namely, impression of 4 teeth on the chest of the deceased and scratches on her left toe and on her elbow, he failed to specifically depose whether there was sexual assault or physical assault on the deceased. It is seen from the report of the post mortem - Ex.P.6, given by PW.6 that the sexual organ is normal. Therefore, as rightly pointed out, there is absolutely no chance of sexual assault. In case of physical assault, if any, it might have awaken PW.3, his wife and his daughter, Chinnaponnu who were sleeping in front of the hut, which is a door less one. They woke up at the cry of the accused, who had the body of the deceased on his lap. In view of the above discrepancy and of the fact that PW.6 was not even enquired or examined by PW.11, the learned counsel for the appellant is right in contending that the learned trial Judge ought to have arrived at a conclusion that the prosecution has failed to prove its case beyond all reasonable doubts.

11. Coming to the conduct and character of the accused, admittedly he was in the scene of occurrence throughout i.e., till his arrest. We have already referred to the statement made in Ex.P1 showing that it is a case of suicide by the deceased and it is specifically stated in the earliest report Ex.P1 given by PW.1 that when PW.3 and his wife entered inside the hut, they saw the accused keeping the body of the deceased on his lap and crying. Same thing has been reiterated by PW.1 and PW.2 before the Court. In cross examination PW.3 has admitted that,

(TAMIL PORTION DELETED)

12. PW.4 - brother of PW.3 has also stated about the love and affection shown by the accused to the deceased. In his cross examination PW.4 has stated that,

(TAMIL PORTION DELETED)

It is also not in dispute that even after marriage of Anjalai with one Subramanian, the accused went to her house and continued his love affairs with her and after separation of her marriage ties with the said Subramanian, the accused married the deceased and registered the same in the Office of the Registrar of Marriages. The presence of the accused at the scene of occurrence is spoken to by Pws. 1 to 5. According to PW.12 - Inspector of Police, he arrested the accused at 7.0 0 p.m., on 13.07.1993 at Valathi Police Station. It is not the case of prosecution that the accused had absconded and was arrested after some time. As said earlier, the accused was in the scene of occurrence all along, till he was arrested by PW.12. As a matter of fact,

it is seen from the prosecution witnesses that it was the accused, who was keeping the body of the deceased on his lap and crying. It is also relevant to mention the evidence of post mortem Doctor - PW.6 who has mentioned in Ex.P6- post mortem certificate that there was a two months' product of conception and the deceased was pregnant. The said information shows that the accused and the deceased were cordial prior to the occurrence and led a normal marital life. All the above aspects coupled with the reference made in Ex.P1, evidence of Pws.1 to 6 clearly show that it is only a case of suicidal and not homicidal amounting to murder. All the above material aspects have not been considered by the learned trial Judge and the learned Judge committed an error in convicting the accused. We are satisfied that the prosecution has failed to establish all the circumstances relied on by it. We also satisfied that the trial Court accepted the case of prosecution based on assumption and presumption without acceptable legal evidence.

In the light of our above discussion, we are satisfied that the prosecution has not established the guilt of the accused beyond reasonable doubts and the appellant / accused is entitled to the benefit of doubts. Accordingly, the conviction and sentence imposed on the accused / appellant made in S.C.No.62 of 1995 on the file of Principal Sessions Judge, Villupuram, are set aside and the criminal appeal is allowed. His bail bond if any, shall stand cancelled.

Index:Yes
Internet:Yes
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To:

1. The Principal Sessions Judge,
Villupuram.

2. The Judicial Magistrate
Gingee.

3. The Judicial Magistrate
Gingee through the Chief Judicial
Magistrate, Villupuram.

4. The Public Prosecutor, Madras.

5. The Superintendent, Central Prison,
Vellore.

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